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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA
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8 PRISCELLA SAINTAL-SMITH,
9 Plaintiff(s),

10 v.

11 ALBERTSON'S, LLC, et al.,
12 Defendant(s).

Case No.: 2:18-cv-01478-APG-DJA

ORDER

13 Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has been
14 granted authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. (ECF No. 5).
15 Plaintiff has submitted an amended complaint. (ECF No. 7). The Court will now screen the
16 amended complaint pursuant to § 1915(e)(2). In so doing, the Court is mindful that allegations of
17 a *pro se* complaint are held to less stringent standards than formal pleadings drafted by lawyers.
18 *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro*
19 *se* pleadings is required after *Twombly* and *Iqbal*).

20 Federal courts are given the authority to dismiss a case if the action is legally “frivolous or
21 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from
22 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a
23 complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions
24 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies
25 could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

26 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
27 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
28 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723

1 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
2 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
3 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it
4 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
5 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
6 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
7 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
8 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
9 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
10 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
11 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
12 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
13 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

14 For the second time, Plaintiff attempts to bring claims under Title VII of the Civil Rights
15 Act of 1964, the 1st Amendment, and the 8th Amendment. *See* Amended Compl. (ECF No. 7).
16 The Court will address the sufficiency of those claims below.

17 A. Title VII

18 Plaintiff alleges she was subjected to race and religious discrimination and retaliation under
19 Title VII. To sufficiently allege a *prima facie* case of discrimination in violation of Title VII to
20 survive a § 1915 screening, Plaintiff must allege that: (1) she is a member of a protected class; (2)
21 she was performing according to the Company’s legitimate expectations; (3) she suffered an
22 adverse employment action; and (4) similarly situated individuals outside of her protected class
23 were treated more favorably. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *see*
24 *also Leong v. Potter*, 347 F.3d 1117, 1124 (9th Cir. 2003); *Gardner v. LKM Healthcare, LLC*,
25 2012 U.S. Dist. LEXIS 111415 (D. Nev. July 27, 2012).

26 In order to make out a *prima facie* case of retaliation, Plaintiff must show: (1) involvement
27 in a protected activity, (2) a “materially adverse” action, and (3) a causal link between the two.
28 *Brooks v. City of San Mateo*, 229 F.3d 917, 928 (9th Cir. 2000) (citing *Payne v. Norwest Corp.*,

1 113 F.3d 1079, 1080 (9th Cir. 1997)); *see also*, *Burlington Northern & Santa Fe Rwy. Co. v. White*,
2 458 U.S. 53, 68 (2006) (setting forth the “materially adverse” standard). To prove causation,
3 Plaintiff “must show by a preponderance of the evidence that engaging in the protected activity
4 was one of the reasons for the ‘adverse employment decision and that but for such activity’ the
5 adverse employment action would not have occurred.” *See Villiarimo v. Aloha Island Air, Inc.*,
6 281 F.3d 1054, 1064-65 (9th Cir. 2002).

7 In her Amended Complaint, Plaintiff claims that she filed a charge with the EEOC on
8 October 3, 2017 and received a dismissal and right to sue letter on June 21, 2018. She also attaches
9 the dismissal and notice of rights letter dated June 19, 2018. As a result, the Court finds that
10 Plaintiff timely filed this action and exhausted her administrative remedies with respect to her Title
11 VII claims.

12 Moreover, Plaintiff’s Amended Complaint includes sufficient factual allegations for the
13 Court to find she can state a plausible claim for relief under Title VII. She alleges that there were
14 statements made to her regarding her race and religion. She also alleges that she reported the
15 incident to her employer’s hotline to file a complaint and was subsequently transferred. It appears
16 as though Plaintiff has suffered an adverse employment action and engaged in a protected activity.
17 While a thin showing on the elements of Title VII discrimination and retaliation claims, the Court
18 finds the allegations in the Amended Complaint sufficient to survive the screening process given
19 Plaintiff’s status as a *pro se* litigant.¹

20 B. Constitutional Claims

21 Plaintiff’s Amended Complaint makes one mention of the 1st and 8th Amendments in a
22 heading under basis of jurisdiction. However, she does not identify any factual allegations under
23 these laws and the Court cannot identify any basis for these laws to be implicated here. As such,
24 the Court construes Plaintiff’s Amended Complaint to intend to state claims under Title VII only.

25 C. Screening Conclusion

27 ¹ When the Court screens a complaint, it does so without the benefit of an adversarial
28 presentation. *Cf. Buchheit v. Green*, 705 F.3d 1157, 1161 (10 Cir. 2012). As such, nothing herein
prevents Defendant from filing a motion to dismiss.

1 In light of the above, it is hereby **ORDERED** that:

- 2 1. The Clerk of the Court shall issue Summons to Defendant and deliver the same to the
3 U.S. Marshal for service. The Clerk of the Court shall also deliver a copy of the
4 amended complaint (ECF No. 7) to the U.S. Marshal for service.
- 5 2. Plaintiff shall have twenty days in which to furnish the U.S. Marshal with the required
6 Form USM-285.² Within twenty days after receiving from the U.S. Marshal a copy of
7 the Form USM-285, showing whether service has been accomplished, Plaintiff must
8 file a notice with the court identifying whether defendant was served. If Plaintiff
9 wishes to have service again attempted on an unserved defendant, a motion must be
10 filed with the Court identifying the unserved defendant and specifying a more detailed
11 name and/or address for said defendant, or whether some other manner of service
12 should be attempted.
- 13 3. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, service must be
14 accomplished within 90 days from the date this order is entered.
- 15 4. From this point forward, Plaintiff shall serve upon Defendant, or, if appearance has
16 been entered by counsel, upon the attorney(s), a copy of every pleading, motion, or
17 other document submitted for consideration by the court. Plaintiff shall include with
18 the original papers submitted for filing a certificate stating the date that a true and
19 correct copy of the document was mailed to Defendants or counsel for Defendants. The
20 Court may disregard any paper received by a District Judge or Magistrate Judge that
21 has not been filed with the Clerk, and any paper received by a District Judge, Magistrate
22 Judge, or the Clerk that fails to include a certificate of service.

23 IT IS SO ORDERED.

24 Dated: October 16, 2019



25
26 DANIEL J. ALBREGTS
27 UNITED STATES MAGISTRATE JUDGE

28 ² The USM-285 form is available at www.usmarshals.gov/process/usm285.pdf.